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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CHRISTINE M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and LILITH W., Appellees.	2 CA-JV 2009-0129 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J-18691800

Honorable Hector E. Campoy, Judge

AFFIRMED

Sarah Michèle Martin — Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt — Tucson
Attorneys for Appellee

B R A M M E R, Judge.

¶1 Christine M. appeals from the juvenile court's order terminating her parental rights to her daughter, Lilith W., on time-in-care grounds. *See* A.R.S. § 8-533(B)(8)(a), (c). When the contested termination hearing was held in October 2009, Lilith was twenty-seven months old and had been in a court-ordered, out-of-home placement for seventeen months. Christine argues the evidence was insufficient to establish the Arizona Department of Economic Security (ADES) had made a diligent effort to provide her with appropriate reunification services as required by § 8-533(B)(8). She also challenges the court's finding that termination of her parental rights was in Lilith's best interests. Because we conclude substantial evidence supported the court's decision, we affirm.

¶2 We view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the juvenile court's termination order. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 13, 53 P.3d 203, 207 (App. 2002). That court, "as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Id.* ¶ 4. On review, we accept the court's findings of fact "unless no reasonable evidence supports those findings," and we will affirm a termination order unless it is clearly erroneous. *Id.*; *see also Audra T. v. Ariz. Dep't Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶3 Here, the juvenile court has set forth the facts relevant to its ruling in considerable detail, and we need not repeat the court's thorough and correct statement of the history of this dependency proceeding. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

We thus refer to the evidence only to the extent required to address Christine's arguments.

Grounds for Termination

¶4 In order to terminate Christine's parental rights pursuant to § 8-533(B)(8)(c), the juvenile court was required to find by clear and convincing evidence that: (1) Lilith had been in a court-ordered, out-of-home placement for fifteen months or longer; (2) ADES had made a diligent effort to provide appropriate reunification services to the family; (3) despite that effort, Christine had been unable to remedy the circumstances causing Lilith to remain in an out-of-home placement; and (4) a substantial likelihood existed that Christine would not be able to exercise proper and effective parental care and control in the near future.[1] *Id.; see also Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005) (grounds for termination must be proven by clear and convincing evidence).

¶5 Although Christine asserts she had "substantially" remedied "many" of the circumstances that resulted in Lilith's out of home placement," she cites no authority suggesting such partial compliance satisfies the statutory standard. *See* A.R.S. § 8-533(B)(8)(c) (requiring court to find "parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement"). Thus, she does not meaningfully challenge the court's determination that she failed to remedy the circumstances that caused Lilith to remain in foster care. Instead, she argues that ADES failed to prove it had provided appropriate reunification services. Christine also appears

[1]In this decision we limit our discussion to Christine's argument that the juvenile court erred in terminating her parental rights pursuant to § 8-533(B)(8)(c). *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

to argue that, because reunification services allegedly were inadequate, the evidence likewise was insufficient to establish a substantial likelihood that she would be unable to parent Lilith effectively in the near future.

¶6 During the dependency proceeding, Child Protective Services (CPS) offered Christine services including supervised visitation, Child and Family Team (CFT) meetings, random drug testing, parenting classes, anger-management and domestic-violence services, a psychological evaluation, a substance-abuse assessment, transportation assistance, and case management. In its termination order, the juvenile court detailed Christine's sporadic participation in these services during the first year of the dependency and addressed the adequacy of ADES's effort as follows:

> The . . . services offered by CPS w[ere] appropriate and necessary to address the issues that le[]d the child to be brought into CPS in the first instance. They, in their totality, amounted to diligent services. The mother argued at trial that the failure of the department to provide economic/financial services to stabilize her amounted to a failure of diligence. However, the mother never directly requested services to address her financial distress. The mother's contact with CPS was infrequent and often indirect. The failure of CPS to address mother's financial distress under the circumstances of the case does not detract from the court's finding of diligent efforts.

¶7 On appeal, Christine argues the reunification services CPS offered her were "inadequate and inappropriate" to address her special needs as a victim of domestic violence. Referring generally to a lengthy compilation of visitation reports, she contends she "presented regularly at visitation with bruises, skinned knees, weakness and hunger and appeared destitute." She maintains that the juvenile court erred in finding her contact with CPS "was infrequent and indirect . . . since [she] had visitation several times a month . . . with the exception of when she was out of state," and that the court also

"erroneously determined that [she] should have specifically requested the assistance she needed when she was never told what services were available." She further argues her failure to attend appointments was attributable to CPS having sent notices for her to the address of Lilith's father, Donald W., even though CPS supposedly knew of Donald's allegedly "abusive and intimidating pattern of behavior."

¶8 As an initial matter, we agree with the state that Christine has failed to cite evidence in the record to support her challenges to the juvenile court's factual findings. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief "shall contain . . . citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (incorporating Rule 13, Ariz. R. Civ. App. P.). Based on ADES's extensive citation to the record and our own review, we conclude Christine's claims of error are not well-founded, as the court's findings were supported by substantial evidence.

¶9 First, the record is replete with evidence that Christine's communication with her CPS case manager was both infrequent and indirect. And she rarely provided CPS with any means of contacting her. For example, after her case manager had been unable in late July 2008 to reach her or Donald, Christine reported she and Donald had separated and she was living with her sister, but she did not provide her sister's address. Then, in mid-August, she told her visitation aide she had moved in with a friend and they were thinking of leasing an apartment together. Two weeks later, Christine informed her case manager's supervisor that she was leaving for California to look after her ill mother.

¶10 When she returned to Arizona in October 2008, her visitation aide, who was not a CPS employee, reported that Christine had told him she was moving back in with Donald "to see if they c[ould] work things out." She also gave Donald's address to her CPS case manager as her mailing address. That was the last information about her

living arrangements Christine provided to her case manager until sometime in April 2009, when she left a telephone message stating she had moved to South Carolina to accept temporary employment but provided no contact information. Christine then returned to Arizona in June but did not provide CPS with her address until early August.

¶11 In addition, contrary to Christine's assertion that CPS failed to provide services appropriate to her needs as a victim of domestic violence, CPS had made clear to both parents from the inception of the dependency that participating in services to address their anger management and domestic violence issues was critical to reunification.[2] We find no evidence that Christine regularly presented herself in a battered condition at visitation, thus alerting CPS to a need for additional services. Nor is there evidence that she ever told a CPS employee or a visit supervisor that Donald had abused her after CPS had taken custody of Lilith or that Christine needed assistance with housing as a result.[3]

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[2]CPS had taken temporary custody of Lilith in May 2008 after Christine and Donald were arrested for domestic violence. Lilith was later adjudicated dependent based on Christine's admission that, after drinking alcohol and taking numerous prescription medications, she had engaged in a physical altercation with Donald while he was holding ten-month-old Lilith. According to a police report admitted in evidence, Christine admitted upon her arrest that she had "r[u]n up to Donald while he was holding the baby and 'punched him in the head'" and had "'tackled' Donald and knocked him to the ground" while he was holding Lilith.

[3]Although she provides no specific citation to the record, Christine apparently alludes to visitation reports for two visits that occurred six months apart. On August 19, 2008, she told her visitation aide she was feeling weak because she suffered from anemia and, for the same reason, had bruised easily after a recent bicycle accident. On that date, the aide had questioned Christine's statement that she had no money to buy food or to telephone her case manager, and Christine responded that she would get money for the telephone calls. Shortly thereafter, Christine left for California. On February 24, 2009, she told a visitation aide that she had been living in the desert with friends, but CPS did not receive this report until March 9, apparently around the same time Christine had left the state for South Carolina. And from February 2009, when she last had telephoned her case manager, until early August, after she had returned to Arizona, CPS had no way of contacting her. We reject Christine's additional suggestion that her "testimony at the

¶12 Moreover, Christine never objected to the juvenile court's determinations, at dependency review hearings in October 2008, February 2009 and May 2009, that ADES had made reasonable efforts to achieve the case plan goal of reunification through the services it had provided. And, despite Christine's assertion that "the only services for abused women that [she] received [were those] she found for herself," there was evidence at the termination hearing that Christine never took advantage of a CPS referral for individual counseling that would have met her case plan requirement for domestic violence services and that CPS also had referred Christine to the domestic violence service agency where she eventually enrolled. Similarly, ADES had referred Christine to parenting classes at two different agencies before February 2009, but Christine did not complete a parenting course before she moved to South Carolina. By the time she returned to Arizona and requested additional referrals in the summer of 2009, the next available class was not scheduled to begin until after the termination hearing in October.

¶13 ADES satisfies its obligation to make a diligent effort to provide appropriate reunification services when it affords a parent "the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). It is not required "to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.* We find no error in the juvenile court's determination that ADES's efforts to reunify the family were reasonable and sufficient.

¶14 In a related argument, Christine maintains ADES failed to establish "there [was] a substantial likelihood that [she would] not be capable of exercising proper and effective parental care and control in the near future." § 8-533(B)(8)(c). But

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[termination] hearing . . . should have alerted the State professionals and the [juvenile] court to the nature of her needs" at some point before the hearing.

psychologist Philip Balch, who had evaluated Christine shortly before the termination hearing, concluded that Christine's "personality features . . . gravitated against any notion that she will soon, or possibly even in the intermediate term, be able to assume an independent parenting role" and that "progress, were it to be made, is unlikely to be realized in the short or even intermediate term." At the termination hearing, Balch further opined that a child placed in Christine's care "would be at risk" because Christine was "not really interested or necessarily capable of putting someone else's needs in front of her own," as she had "demonstrated by leaving the state," "not adhering to [her] case plan," and missing scheduled visits with Lilith. Thus, substantial evidence supported the juvenile court's finding that Christine likely would be unable to parent Lilith adequately in the near future.

Best Interests

¶15 Christine also challenges the juvenile court's finding, by a preponderance of the evidence, that termination of her parental rights was in Lilith's best interests. *See* § 8-533(B); *Kent K.*, 210 Ariz. 279, ¶ 41, 110 P.3d at 1022 (preponderance standard of proof applies to best-interests determination). In addressing this finding, we consider whether reasonable evidence established that Lilith "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 6, 100 P.3d 943, 945 (App. 2004). The court's best-interests finding here is supported amply by the testimony of the most recent CPS case manager, who opined that Lilith is adoptable and that termination would serve her best interests, as well as by Balch's testimony that Lilith would be at risk if returned to Christine's care.

Conclusion

¶16 The record supports fully the juvenile court's extensive factual findings and its legal conclusions. We therefore adopt the court's findings of fact, approve its conclusions of law, and affirm the order terminating Christine's parental rights.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge